

# State of South Dakota

## SEVENTY-NINTH SESSION LEGISLATIVE ASSEMBLY, 2004

347J0136

### SENATE BILL NO. 155

Introduced by: Senators Koetzle, Dennert, Duxbury, Kloucek, Moore, Nachtigal, Reedy, Sutton (Dan), and Symens and Representatives Nesselhuf, Bartling, Burg, Elliott, Engels, Gassman, Glenski, Hanson, Hargens, Hundstad, Kroger, Lange, Miles, Sigdestad, and Thompson

1 FOR AN ACT ENTITLED, An Act to exempt the purchase of food from sales and use taxes.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 There are exempted from the provisions of this chapter and the computation of the tax  
6 imposed by it, the gross receipts from the sale of food.

7 Section 2. That § 10-45-1 be amended by adding thereto NEW SUBDIVISIONS to read as  
8 follows:

9 "Food" and "food ingredient," any substance, whether in liquid, concentrated, solid, frozen,  
10 dried, or dehydrated form, that is sold for ingestion or chewing by humans and is consumed for  
11 its taste or nutritional value. The term, food, does not include alcoholic beverages, tobacco, soft  
12 drinks, candy, or prepared food;

13 "Soft drinks," any nonalcoholic beverages that contain natural or artificial sweeteners. The  
14 term, soft drinks, does not include any beverage that contains milk or milk products, soy, rice



1 or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume;

2 "Candy," any preparation of sugar, honey, or other natural or artificial sweeteners in  
3 combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars,  
4 drops, or pieces. The term, candy, does not include any item that contains flour or requires  
5 refrigeration;

6 "Prepared food," any:

7 (a) Food sold in a heated state or heated by the seller;

8 (b) Two or more food ingredients mixed or combined by the seller for sale as a  
9 single item. The term, prepared food, in this subdivision does not include food  
10 that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat,  
11 poultry, and foods containing these raw animal foods requiring cooking by the  
12 consumer as recommended by the Food and Drug Administration in chapter  
13 3, part 401.11 of its Food Code as of January 1, 2004, so as to prevent food  
14 borne illnesses; or

15 (c) Food sold with eating utensils provided by the seller, including plates, knives,  
16 forks, spoons, glasses, cups, napkins, or straws. A plate does not include a  
17 container or packaging used to transport the food.

18 Section 3. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as  
19 follows:

20 There are exempted from the provisions of this chapter and the computation of the tax  
21 imposed by it, the gross receipts from the sale of food.

22 Section 4. That § 10-46-1 be amended by adding thereto NEW SUBDIVISIONS to read as  
23 follows:

24 "Food" and "food ingredient," any substance, whether in liquid, concentrated, solid, frozen,

dried, or dehydrated form, that is sold for ingestion or chewing by humans and is consumed for its taste or nutritional value. The term, food, does not include alcoholic beverages, tobacco, soft drinks, candy, or prepared food;

"Soft drinks," any nonalcoholic beverages that contain natural or artificial sweeteners. The term, soft drinks, does not include any beverage that contains milk or milk products, soy, rice or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume;

"Candy," any preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. The term, candy, does not include any item that contains flour or requires refrigeration;

"Prepared food," any:

(a) Food sold in a heated state or heated by the seller;

(b) Two or more food ingredients mixed or combined by the seller for sale as a single item. The term, prepared food, in this subdivision does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its Food Code as of January 1, 2004, so as to prevent food borne illnesses; or

(c) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

Section 5. The effective date of this Act is July 1, 2005.